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8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 DONALD LEO MELLEIN,

12 Plaintiff,

13 v.

14 UNITED STATES OF AMERICA, et
15 al.,

16 Defendants.

No. 2:23-cv-07970-RGK-MAR

**[PROPOSED] ORDER GRANTING
THE UNITED STATES OF
AMERICA'S MOTION TO DISMISS**

17 The Motion to Dismiss ("Motion") filed by defendant United States of America,
18 having come on for hearing, and the Court having considered the Motion, the
19 Opposition, and the Reply, the evidence presented, and oral argument thereon,
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21 THE COURT HEREBY FINDS THAT:

- 22 1. The Motion is Granted.
- 23 2. Counts I, II, and III, which assert claims against the United States under the
24 Federal Tort Claims Act, are all dismissed for lack of subject matter
25 jurisdiction. The United States has not waived its sovereign immunity with
26 respect to claims arising of the detention of goods, and such claims therefore
27 cannot proceed under the Federal Tort Claims Act. 28 U.S.C. § 2670(c); *see*
28 *Cervantes v. United States*, 330 F.3d 1186, 1189 (9th Cir. 2003); *Agro*

- 1 *Dynamics, LLC v. United States*, No. 20-CV-2082-JAH-KSC, 2023 WL
 2 6130813, at *13–14 (S.D. Cal. Sept. 19, 2023).
- 3 3. Counts IV, V, and VI are dismissed for lack of subject matter jurisdiction with
 4 respect to the United States, which has been substituted as their defendant in
 5 place of Special Agent Zellhart pursuant to the Attorney General’s certification
 6 under the Westfall Act, for the same reasons as above. The United States has
 7 not waived its sovereign immunity with respect to tort claims arising of the
 8 detention of goods, and such claims therefore cannot proceed against the
 9 United States under the Federal Tort Claims Act. 28 U.S.C. § 2670(c).
- 10 4. Counts II and V for breach of bailment are also dismissed for failure to state a
 11 claim because the First Amended Complaint does not allege facts showing that
 12 Plaintiff entered into a contract with the government, but rather alleges that the
 13 FBI seized the goods against the Plaintiff’s will during a warrant operation. *See*
 14 *Kam-Almaz v. United States*, 682 F.3d 1364, 1369 (Fed. Cir. 2012).
- 15 5. Counts VII and VIII for violations of the Bane Act are dismissed for lack of
 16 subject matter jurisdiction because the United States has not waived its
 17 sovereign immunity with respect to constitutional torts. *See Minneci v. Pollard*,
 18 565 U.S. 118, 126 (2012); *Blanchard v. County of Los Angeles*, 2022 WL
 19 17081308, at *3 (C.D. Cal. Aug. 25, 2022). Furthermore, the First Amended
 20 Complaint also fails to allege facts sufficient to state a Bane Act claim, which
 21 requires a showing of threats, intimidation, or coercion, and these claims are
 22 subject to dismissal on that basis as well. *See Han v. Cty. of Los Angeles*, 2016
 23 WL 2758241, at *9 (C.D. Cal. May 12, 2016). Here, the First Amended
 24 Complaint alleges that the property at issue was seized in a warrant operation
 25 that the FBI executed at a facility owned by U.S. Private Vaults, not that the
 26 property was seized by intimidating or threatening the Plaintiff.
- 27 6. Count IX, entitled “as-applied deprivation of property without due process of
 28 law under the Fifth Amendment Due Process Clause,” is dismissed because it

1 is not a cause of action. If interpreted as asserting a constitutional violation, it
2 is dismissed for lack of subject matter jurisdiction because the United States
3 has not waived its sovereign immunity with respect to constitutional torts. *See*
4 *Pesnell v. United States*, 64 F. App'x 73, 74–75 (9th Cir. 2003).

5 IT IS HEREBY ORDERED that the Motion is granted and the United States is
6 dismissed as a party. The First Amended Complaint's claims as against the United
7 States, including those for which the United States has substituted as defendant, are
8 dismissed without leave to amend.

9 IT IS SO ORDERED.

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11 Dated: _____

12 _____
13 THE HONORABLE R. GARY KLAUSNER
14 United States District Judge
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